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October 2, 2022

BY ELECTRONIC MAIL

Hon. Lewis A. Kaplan
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Anthony Rapp v. Kevin Spacey Fowler a/k/a Kevin Spacey
Southern District of New York, Case No. 1.20-cv-09586 (LAK)

Dear Judge Kaplan:

As you know we represent the plaintiff in the above matter. We write pursuant to the Court's September 27, 2022, Order on Objections to Defendant's Deposition Designations and Plaintiff's Cross Designations. In that Order, Your Honor invited the parties to submit a letter concerning the admissibility of the testimony found on page 46 line 12 through page 48 line 15 of the deposition of John Barrowman (Exhibit A).

The designation at issue is Mr. Barrowman testifying about the one and only time he told Mr. Rapp that Kevin Spacey hit on him, Mr. Barrowman, while the two were sitting on Kevin Spacey's bed, in his apartment, after Mr. Barrowman, Kevin Spacey and Mr. Rapp went to the Limelight in 1986. The defendant's expert, Alexander Bardey, MD, a psychiatrist, testified at his deposition that when Kevin Spacey invited Mr. Rapp and Mr. Barrowman to the Limelight in 1986, that Mr. Rapp, who was only 14 years old, was jealous that, among other things, "John Barrowman and Kevin Spacey, were connecting, were flirting, were having a good time and he was left out, and I think that made him envious of not being part of his interaction with two people that he respected and admired and probably had some level of crush on" (Exhibit B, Bardey Deposition pg. 73).

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Dr. Bardey further testified that as a result of Mr. Rapp, at 14, allegedly being jealous of flirtations between Kevin Spacey and John Barrowman that “it’s my opinion that it is quite likely that having felt neglected, having [been] made to feel like a small child that that upset Mr. Rapp. And given his personality makeup, rather than accept the fact that he was a third wheel he made up a story to put himself in the center of the story and has maintained that ever since” (Exhibit B - Bardey Deposition 51).

Dr. Bardey’s testimony assumes that Mr. Rapp was aware of and was jealous of, among other things, flirtations between Mr. Barrowman and Kevin Spacey while they were occurring. The designated testimony by Mr. Barrowman directly refutes the defendant’s expert’s opinion in that Mr. Barrowman testified that it “wasn’t until many, many years later,” that Mr. Barrowman told Mr. Rapp that Kevin Spacey was hitting on him that night they all went to the Limelight (*see* Exhibit A, Barrowman Deposition 46). The designated testimony is proper in that it directly challenges the credibility and opinions of the defendant’s expert by establishing that Mr. Rapp, when he was 14, did not know that Kevin Spacey was hitting on John Barrowman. Indeed, there is no evidence that Mr. Rapp, at 14, had a crush on Mr. Spacey or Mr. Barrowman or that he was even aware that Kevin Spacey was hitting on John Barrowman that night.

Accordingly, it is respectfully requested that the Court admit the testimony contained in designations 46:12 – 48:15.

Respectfully submitted,
GAIR, GAIR, CONASON, RUBINOWITZ, BLOOM,
HERSHENHORN, STEIGMAN & MACKAUF


Peter J. Saghir